

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 WINDY PAYNE,

11 Plaintiff,

12 v.

13 PENINSULA SCHOOL DISTRICT, et al.,

Defendant.

CASE NO. C05-5780RBL

ORDER DENYING MOTION FOR
RECONSIDERATION

14 THIS MATTER comes before the Court on Plaintiff's Motion for Reconsideration [Dkt.
15 #142] of the Court's prior Order [Dkt. #140] filed on August 30, 2013. The Court has reviewed
16 the motion.

17 Under Local Rule 7, Motions for Reconsideration are disfavored, and will ordinarily be
18 denied absent a showing of manifest error, or a new factual or legal basis which could not have
19 been raised earlier. Local Rule 7(h). This standard has not been met in this case, and the Court
20 will not reconsider its prior filing.

21 The Court will accept the defendants' invitation to elaborate and clarify its prior opinion
22 [Dkt. #140] by stating that the denial of qualified immunity was as a matter of law.

23 The claim asserted here – for knowing and intentional infliction of
24 excessive force is cognizable under the Fourth Amendment and

1 exists separate and apart from the denial of a FAPE, irrespective of
2 the fact that the alleged excessive punishment took place in a
3 special education classroom. *See, e.g., Preschooler II v. Clark*
Cnty. Sch. Bd. Of Trs., 479 F.3d 1175, 1181-82 (9th Cir. 2007)
4 (holding that clearly established law under the Fourth Amendment
prohibits “excessive physical abuse of schoolchildren”); *Doe ex.*
rel. Doe v. Haw. Dept. of Educ., 334 F.3d 906, 909 (9th Cir. 2003).

5 *Payne v. Peninsula School Dist., et al.*, 653 F.3d 863, 880 (9th Cir. 2011) cert. denied, 132 U.S.
6 1540 (2012).

7 Viewed in the most favorable to the plaintiffs the evidence meets the definition of child
8 abuse. The State of Washington has proscribed the very conduct alleged by plaintiffs. *See*
9 former WAC 392-172-394 (in effect at the time in question). There are serious issues of fact that
10 the Court cannot resolve in a summary proceeding. The Court can and has ruled that if the facts
11 are proven as alleged by plaintiffs it is tantamount to child abuse which all reasonable citizens
12 clearly deplore, and the teacher would not be entitled to qualified immunity as a matter of law.

13 The Plaintiff's Motion for Reconsideration [Dkt. #142] is **DENIED**.

14 Dated this 19th day of September, 2013.

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17 RONALD B. LEIGHTON

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24 UNITED STATES DISTRICT JUDGE